IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

WP(C).No. 3904 of 2007(M)

OS.148/2004 of MUNSIFF COURT, NADAPURAM

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PETITIONER:

PATTUVAYALIL SAROJINI, AGED 42,
W/O LAKSHMANAN, NELLIUALLU PARAMBATH,
KUNNUMMAL AMSOM, VATTOLI DESOM,
VATAKARA TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

1. RANJITH KUMAR N.P., S/O.BALAN,
MAVULLAPARAMBATH, VATAYAM AMSOM-DESOM,
VATAKARA TALUK.

2. KINARULLATHIL DEVI, S/O.KANARAN,
KINARULLATHIL, KUNNUMMAL AMSOM, VATTOLI DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT.

3. KINARULLATHIL CHANDRAN, S/O.KANARAN, DO. DO.

4. KINARULLATHIL SUGANTHI, DO. DO.

5. KINARULLATHIL RAVEENDRAN, DO. DO.

6. KINARULLATHIL DIVAKARAN, DO. DO.

7. KINARULLATHIL NIRMALA, D/O.KANARAN, DO. DO.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

W.P.(C)No. 3904 of 2007 M

JUDGMENT

The plaintiff in O.S.No.148/04 on the file of the Munsiff's Court, Nadapuram is the petitioner. She moved an application for issue of a Commission to measure out the properties and locate the plaint schedule property with the assistance of survey records to prove her possession over the plaint schedule property. The said application was dismissed by the Munsiff vide Exhibit P3 order. The court observed that the plaintiff and the defendants in the suit are claiming tile and possession over the plaint schedule property on the basis of their respective title deeds and actual physical possession and that no one has a case that the property is not properly identified. Hence, according to the court below, the question of locating the property on the basis of the survey

records did not arise for consideration and actual physical possession of the plaint schedule property cannot be proved by locating the property by the Commissioner with the assistance of survey records. Accordingly, the court below was of the view that issue of a Commission with the assistance of Surveyor to demarcate the property as per the title deeds did not arise and that the commission application is irrelevant and unnecessary to be allowed, the suit being for injunction only.

2. Learned counsel for the petitioner made earnest efforts to contend that in view of the amendment of the plaint, including paragraph 1(a) as well, as evidenced by Exhibit P2, produced in this writ petition, commission application should have been allowed. Even after the amendment of the plaint, the petitioner/plaintiff has not sought for declaration of title or recovery of possession of any portion, if found to be in possession of the defendants or anybody else.

3. Hence, as matters stand, in an injunction suit, there is no necessity to have a Commission issued with the assistance of the Surveyor for measuring out the property and fixing the boundaries. The order of the court below is, hence, legal and correct and does not deserve to be interfered with.

4. It is submitted by the learned counsel for the petitioner that the petitioner wants to amend the plaint, incorporating prayers for declaration of title and consequential reliefs. If such an amendment is asked for and allowed, if needed, at a later stage, he can apply for issue of a Commission and then the court below will pass appropriate orders thereon. However, the order impugned does not deserve to be interfered with.

Accordingly, this writ petition is dismissed.

12th February, 2007 (K.P.Balachandran, Judge)

tkv